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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,110	04/14/2004	Kenneth D. Eisenbraun	KDE-23702/03	6162

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EXAMINER

SZUMNY, JONATHON A

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/824,110	Applicant(s) EISENBRAUN, KENNETH D.	
	Examiner Jon A Szumny	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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This is the first office action for application number 10/824,110, Merchandising Hanger, filed on April 14, 2004.

Priority

Domestic priority of application number 60/463,664 filed on April 17, 2003 is acknowledged.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the abstract, line 1, "is described" should be removed.

The disclosure is objected to because of the following informalities:

On page 3, line 9, "having" should be --has--;

On page 4, lines 12-14, "While it is appreciated... ..optimal thickness thereof" is not a complete sentence and therefor not understood.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 3 and 13, it is stated, "there is an opening adjacent to the base of the stud and the first tab portion or the third tab portion integral therewith." However, if there is such an opening, as is presumably shown in figure 4 (not labeled), it is not understood how the stud would be able to be attached to either the first or third tab portion. Further, such openings 38 do not appear to be "openings" in figure 3.

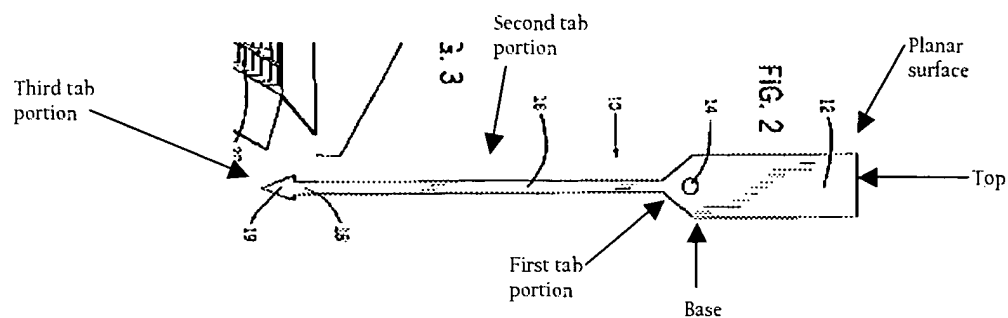
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-12 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 6,401,304 to Dossett in view of U.S. Patent number 5,367,809 to Ross.

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With respect to claims 1, 2, 4, 5 and 7, Dossett '304 discloses a hanger (figure 2, with alternative embodiment of column 3, lines 17-19) comprising a planar surface (above) having a top and a base, the planar surface inherently adapted to receive printed indicia thereon and be suspended from a rod, and a tab (above) extending from the base of the surface, wherein the tab has first, second and third tab portions (above) with the second tab portion being intermediate the first and third tab portions, wherein the tab and planar surface are a single piece of molded plastic.

However, Dossett '304 fails to specifically reveal the tab to have a stud integral with one of the first tab portion or the third tab portion and an aperture having a flange therein through the first tab portion or the third tab portion not having the stud integral therewith, such that the first tab portion has a first tab portion thickness, the third tab portion has a third tab portion thickness, and the second tab portion has a second tab portion thickness where the second tab portion thickness is less than the first tab portion thickness.

Nevertheless, Ross '809 divulges a device that inherently functions as a hanger including a tab (figure 2) with first, second and third tab portions (12,21,13, respectively) with the second tab portion being intermediate the first and third tab portions, wherein the tab has a stud (14) integral with one of the first tab portion or the third tab portion and an aperture (20) having a

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flange (in and around aperture, there are 4) therein through the first tab portion or the third tab portion not having the stud integral therewith, such that the first tab portion has a first tab portion thickness, the third tab portion has a third tab portion thickness, and the second tab portion has a second tab portion thickness where the second tab portion thickness is less than the first tab portion thickness, wherein the stud has a body (15) and conical, hemispherical cap (16), wherein the stud extends from the first tab portion and the aperture is through the third tab portion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first, second and third tab portions of Dossett '304 to have a stud on one of the first or third tab portions and an aperture with a flange/flange portions therein on the other of the first or third tab portions such that thickness of the second tab portion is less than that of the first tab portion as in Ross '809 so as to provide for a more secure and/or alternate connection between the first and third tab portions while allowing the second tab portion to bend more easily thus facilitating the connection between the first and third tab portions.

Further regarding claims 6 and 16, Dossett '304 in view of Ross '809 teach the planar surface and tab to be a single piece of *plastic* material (column 4, line 67 of Dossett '304), but fail to specifically teach *thermoplastic*. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized thermoplastic material since it is a well-known material in the art.

Regarding claims 8-12, 14, 15, 17 and 18, Dossett '304 in view of Ross '809 teach the previous invention failing to specifically teach the ratio of the first tab portion thickness:second

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tab portion thickness:third tab portion thickness to be 1.5-3.5:1:1.3-2.5, wherein the first tab portion thickness is greater than the third tab portion thickness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ratio of the thickness of the first, second and third tab portions to be any number of various ratios, including 1.5-3.5:1:1.3-2.5 since the optimum or workable ranges discovered by routine experimentation is usually within the skill level of an ordinary artisan. See *In Re Aller*, 105 USPQ 233 (CCPA 1955).

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the first tab portion and the third tab portion to be any number of various dimensions, including the first tab portion being thicker than the third tab portion, because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result. See *In re Kuhle*, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heinle '105, Christman '185, Rapata '004, Merseur '124, Schuplin '060, Graves '329, Furutu '772 and Polad '885 divulge various hangers with planar portions and tabs with first, second and third tab portions.

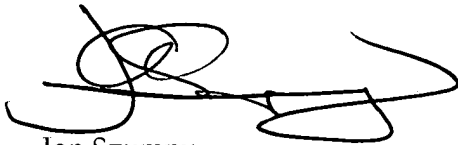
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

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The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

(703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish extending to the right.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
January 8, 2005